

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 13, 2005 Session

**SHARON M. LAMB v. CLYDE B. LAMB, JR.**

**Appeal from the Chancery Court for Marshall County  
No. 12922 James B. Cox, Chancellor**

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**No. M2004-01768-COA-R3-CV - Filed February 28, 2006**

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The trial court granted a divorce to both parties and divided the marital property equally. The husband argues on appeal that the trial court erred by classifying as the wife's separate property a life estate in a house and a farm which she had inherited from her grandmother. In the alternative, he argues that the trial court should at least have classified the increase in the value of the farm as marital property, and awarded half of that increase to him. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Barbara G. Medley, Lewisburg, Tennessee, for the appellant, Clyde B. Lamb, Jr.

Roger E. Brandon, Lewisburg, Tennessee, for the appellee, Sharon M. Lamb.

**OPINION**

**I. MARRIAGE**

Clyde Lamb Jr. and Sharon Lamb married in 1973. They built their marital home on four acres which were deeded to them by Sharon Lamb's grandparents and which adjoined the grandparents' 100 acre farm. The husband worked full-time in a factory. The wife worked part-time in the office of a construction company. A few years after their marriage, the husband also started working part-time on the farm, raising corn, wheat, soy beans and tobacco. He paid the grandparents 25% of the money he earned from the sale of farm products. He deposited the remaining 75% in a joint account he shared with his wife, and paid all the farming expenses from that account.

In 1985, the Lambs became the parents of a daughter, Scarlet, and the wife stopped working outside the home. Sharon Lamb's grandfather died around the same time. In February of 1991, Mrs.

Lamb's grandmother, Lizzie Lee Darnell, passed away. Mrs. Darnell's last will and testament included a bequest of the family farm as follows:

I direct that if my granddaughter, Sharon Lamb, survives me, I devise to her for her life my farm containing 104.25 acres, more or less, in the Second Civil District of Marshall County, Tennessee, and upon her death, I give and devise the same to my beloved great granddaughter, Scarlet Marie Lamb. I direct that Sharon Lamb, for and during her natural life, have the right to receive rents and profits from the use of the farm, but that she not commit waste so as to preserve the remainder for my great grandchild, Scarlet Marie Lamb. I direct that in the event my beloved granddaughter Sharon Lamb, should predecease me, then I give, devise and bequeath all my real estate to my great grandchild, Scarlet Marie Lamb."

Clyde Lamb continued working on the farm after the death of Mrs. Darnell. He converted it to a livestock operation, sowing grass and raising beef cattle and goats. Mr. Lamb continued to deposit 75% of the proceeds from the farm operations into the joint account, and to pay the farm expenses out of that account. The other 25% was deposited into a separate account, controlled by Mrs. Lamb. She used that account for household expenses, including the property taxes, her car insurance, medical bills, and things for the parties' daughter.

The property that was devised also included a 100 year old dwelling house on the land, which was in very poor condition. Mr. Lamb worked on the house to make it rentable. He installed vinyl siding, shutters, storm windows, insulation and central heat and air. He painted, paneled two rooms, did some rewiring, and put linoleum and carpet on the floors. He spent about \$12,000 on the initial repairs, and rented it out thereafter.

## **II. DIVORCE**

On October 2, 2003, Sharon Lamb filed a complaint for divorce in the Chancery Court of Marshall County. Prior to the hearing of the case, the parties stipulated as to grounds, and were able to reach agreement upon most property issues. The hearing was conducted on May 12, 2004. There was no request for alimony. Almost all the testimony at trial had to do with the interest in real property Mrs. Lamb had inherited from her grandmother.

The wife did not dispute that the husband had worked the farm for many years, but she denied that he had made any significant improvements to it. The wife's father, a retired farmer who lived nearby, also testified that he had not seen any major improvements to the property. For his part, Mr. Lamb testified that he fertilized every year, sowed grass, increased the size of a tool shed, added a shed on one side of the barn, and did quite a bit of fencing.

As for the rental house, the wife called the current tenant to the stand. She testified that she had lived there since 2000, that the house was quite dilapidated, and that there were problems with the plumbing, the wiring and the floors. She also testified that she was \$1,100 behind in the rent,

and that she had borrowed money from Mr. Lamb. On cross-examination, she admitted she had no knowledge of the condition the house was in when the parties came into possession of it in 1991.

During closing statements, the wife's attorney contended that her interest in the farm and the rental house were her separate property, and should not be included in the division of marital property. The husband's attorney argued to the contrary that the parties treated it as if it were owned by both of them, and that the court could therefore declare that it had become marital property by virtue of the long-recognized doctrine of transmutation.

The trial court's final decree of divorce granted the divorce to both parties pursuant to Tenn. Code Ann. § 36-4-129. All the bank accounts were divided equally. The husband was awarded the marital home, and was ordered to pay the wife \$57,000 to quitclaim her interest to him. The husband was also awarded all the farm equipment, but the livestock was ordered sold, with the proceeds to be divided equally between the parties. A qualified domestic relations order was drafted to likewise divide Mr. Lamb's retirement account equally.

The court made a specific finding that the evidence did not preponderate in favor of transmutation of the life estate and therefore that the separate property devised to the wife had not become marital property. The court found however that the dwelling house had increased in value by \$15,400 "because of the 'sweat equity' by the Defendant." The court used actuarial tables for mortality and federal revenue rulings to calculate the value of a life estate in the \$15,400 asset. *See* Tenn. Code Ann. § 67-83-10 (valuation of future, contingent or limited estates). The court's calculations resulted in an award for the husband of \$3,929.16.

Aside from his improvements to the dwelling house, the court found that the husband had not made a substantial contribution to the preservation and appreciation of the wife's life estate in the farm, and ruled that he was therefore not entitled to any award derived from its increase in value. Mr. Lamb filed a motion to alter or amend the trial court's order, which was denied. This appeal followed.

### **III. SEPARATE PROPERTY OR MARITAL PROPERTY?**

The statutes governing divorce, Tenn. Code Ann. § 36-4-101 *et seq.*, direct the courts to divide the marital property equitably "without regard to fault in proportions as the court deems just." Tenn. Code Ann. § 36-4-121. Marital property includes all types of property acquired in the course of the marriage. Tenn. Code Ann. § 36-4-121(b)(1)(A). However, a spouse's separate property is not subject to division. It includes "[p]roperty acquired by a spouse at any time by gift, bequest, devise or descent." Tenn. Code Ann. § 36-4-121(b)(2)(D). There can be no doubt that when Mrs. Lamb received the life estate that was devised to her by her grandmother it became her separate property.

The courts of Tennessee have recognized two possible methods whereby property that is separately owned can be converted into marital property for the purpose of equitable division in divorce cases. The first is commingling, which occurs when separate property becomes inextricably mixed or mingled with marital property or with the separate property of the other spouse. *Smith v. Smith*, 93 S.W.3d 871, 878 (Tenn. Ct. App. 2002). There is no evidence in this case of any transactions that would have the effect of mingling the wife's life estate with any other property, so commingling does not apply.

The second method is transmutation, which takes place when the parties treat separate property in such a way as to reflect an intention that it become marital property. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002); *Batson v. Batson*, 769 S.W.2d 849, 858 (Tenn. Ct. App. 1988). Transmutation may occur, for example, when the separate property of one spouse is used to purchase other property, which is then placed in the name of both spouses. *Barnhill v. Barnhill*, 826 S.W.2d 443 (Tenn. Ct. App. 1991).

Simply placing the title to a piece of separate property in the names of both parties creates a rebuttable presumption of a gift to the marital estate. *Smith v. Smith*, 93 S.W.3d 871, 878 (Tenn. Ct. App. 2002); *Wright-Miller v. Miller*, 984 S.W.2d 936, 941 (Tenn. Ct. App. 1998). However, separate property can become marital property even without a change in the title. As this court said in *Mondelli v. Howard*, 780 S.W.2d 759, 774 (Tenn. Ct. App. 1989), "[i]n the final analysis, the status of property depends not on the state of its record title, but on the conduct of the parties."

The husband claims that the parties treated the farm as a marital asset. He notes that they filed joint income tax returns, and reported depreciation and profit or loss from the farm operations on each of their returns. They also installed a swimming pool on the farm property rather than on their four acres, because it was a good level place and ownership didn't seem to be an issue at the time.<sup>1</sup>

Whether an asset is separate property or marital property is a question of fact. *Cutsinger v. Cutsinger*, 917 S.W.2d 238, 241 (Tenn. Ct. App. 1995). The trial court made a specific finding of fact that the parties had not treated the life estate as marital property. Findings of fact by the trial court are entitled to a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d).

The husband's argument is based solely on his efforts as a farmer. He worked the land steadily during the marriage, and the income produced by his labor inured to the benefit of both parties. Prior to 1991, 75% of the income went into the parties' joint account. The other 25% was paid to the grandparents as a form of rent. After the death of the grandmother, the parties followed the same practice, except that the 25% share went into the wife's separate account instead.

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<sup>1</sup>The wife's attorney stated at oral argument that the pool in question was not an in-ground pool.

There is a distinction between a farming business and the ownership of the land upon which the business is conducted. It is not an unusual practice for an owner of farmland to rent the productive capacity of his or her land to another for a share of the resulting crops. Regardless of how many years this may be done, that practice does not as a matter of law result in a transfer of an interest in the land to the party who rents it.

The proof showed that the husband's farming operation contributed modest funds to the parties' total income. That income was deposited into the same account as was the income he received from his factory job and from which ordinary household expenses were paid. Neither party claimed the farming business itself as property, marital or separate. Its classification and valuation are not before us.

The land itself, and the life estate in that land, are another matter. No marital funds or separate funds of the husband were used to procure the property. There was no mortgage on it, and thus no use of marital funds to reduce or eliminate an encumbering debt. The interest in the property was never used as security for any existing or new debt of the parties.

The parties' conduct after the wife's inheritance indicates they continued to view ownership of the real property as separate from operation of the farming business. The wife's acquisition of the life estate did not result in the parties altering the practices they had become accustomed to when the wife's grandparents owned the land. The husband continued to segregate 25% of the farming proceeds, which he paid into the wife's separate account, and she paid the property taxes from that account. The husband's payments were an acknowledgment of the wife's ownership, and he continued to pay rent, but to a different owner.

In sum, there is very little evidence to indicate an intention by the parties to treat the wife's life estate as marital property, and a great deal of evidence that they intended that it remain separate. The evidence does not preponderate against the trial court's finding that the wife's separate property was not treated in such a way as to transmute it into marital property.

#### **IV. INCREASE IN VALUE**

As an alternative theory for a share in the life estate, the husband argues that he is entitled to a portion of the increase in the value of the farm from the time of inheritance to the time of divorce. That argument is based upon a provision of Tenn. Code Ann. § 36-4-121, which includes in the definition of marital property "income from and any increase in value during the marriage of, property determined to be separate property . . . if each party substantially contributed to its preservation and appreciation . . ." Tenn. Code Ann. § 36-4-121(b)(1)(B).

The parties stipulated that the value of the life estate at the time of the devise was \$80,800, and that at the time of the divorce it was worth \$165,000. The trial court found, however, that the increase in the value of the farm was due to the general appreciation of property in Marshall County during the period in question, and not to the husband's efforts.

The case of *Harrison v. Harrison*, 912 S.W.2d 124 (Tenn. 1995) presents a situation analogous to the one before us. In that case, the husband received an interest in farm land by inheritance. He raised cattle on the property and his wife helped him. A portion of the property was taken by eminent domain for the construction of Interstate Highway I-24. As a result of the road construction, the husband's remaining interest in the property leaped in value from \$3,500 to over \$650,000.

The trial court found the husband's entire interest to be marital property subject to division. On appeal, this court found that only the increase in value was marital property. Our Supreme Court reversed both lower courts, ruling that the entire value of the husband's interest remained his separate property. The court reasoned that the wife's assistance to her husband did not form a sufficient basis to conclude that the parties intended to treat the property as marital property. The court also observed that the increase in the value of the property was due to the construction of I-24 and could not be attributed to any of the wife's efforts. Therefore, even though the increase in value had occurred during the course of the marriage, the wife did not make a substantial contribution to the property's preservation and appreciation, as required by Tenn. Code Ann. § 36-4-121(b)(1)(B).

In the present case, Mr. Lamb's efforts generated income for the parties, and he made some minimal improvements to the property in the form of a few sheds and some fencing. There was no proof that these improvements actually increased the value of the land. There was a substantial increase in value, but the trial court found it was due to the general appreciation of property in Marshall County during the period in question, which was related in part to the construction of new schools in the area. The evidence does not preponderate against the trial court's finding.

## V.

The order of the trial court is affirmed. We remand this case to the Chancery Court of Marshall County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant, Clyde Lamb, Jr.

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PATRICIA J. COTTRELL, JUDGE